***THE HON'BLE SRI JUSTICE V.V.S.RAO**

+ WRIT PETITION Nos.25017 and 25018 of 2006

%Dated 01-12-2006

Mir Fazle Ali Nasiri and another.

… Petitioners.

VERSUS

$ The State of A.P.,
Rep. By its Secretary, Revenue, Secretariat, Saifabad,
Hyderabad, and others.

… Respondents.

! Counsel for Petitioners : Sri E.Manohar, Senior Counsel,
for
Sri.D.Madhava Rao.

^Counsel for Respondents: G.P for Revenue

<GIST:

>HEAD NOTE:

? Cases referred

1. AIR 1966 PATNA 144 (FB)

2. AIR 2003 SC 511 = (2003) 2 SCC 111

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.25017 and 25018 of 2006

Dated:01.12.2006

Between:

Mir Fazle Ali Nasiri and another.

…Petitioner

and

The State of A.P., and others.

…Respondents

HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.25017 and 25018 of 2006

COMMON ORDER:

The case of the petitioner in W.P.No.25017 of 2006 in brief is as follows. The land admeasuring Ac.0.33 guntas in Survey No.181 (part) situated at Mirzaguda, Hamlet of Janwada Village, Shankerpally Mandal in Ranga Reddy District, originally belonged to Smt.Prameela Devi. She sold the property under registered sale deed dated 09.11.1971 to Tuljaram Singh, who in turn alienated the property in favour of one Abdul Rasheed Khan. The petitioner allegedly purchased the property under registered sale deed bearing Document No.9147/98. The land was allegedly shown in the revenue records in the name of Abdul Rasheed Khan and the petitioner. In 2001 fourth respondent herein filed an application before the Revenue Divisional Officer (RDO), Chevella, claiming ownership certificate under Section 38-E of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act, 1950 (for short 'the Tenancy Act'). The petitioner alleges that without notice to the petitioner, the RDO, Chevella, issued certificate to fourth respondent on 18.02.2006.

Aggrieved by the same, petitioner filed an appeal before third respondent under Section 90 of the Tenancy Act on 27.09.2006. The petitioner alleges that he also prayed for *ex parte ad interim* order suspending the proceedings of the RDO. The third respondent, namely the Joint Collector, allegedly did not pass any orders, and therefore, the petitioner filed instant Writ Petition seeking a writ of mandamus directing the third respondent to dispose of the appeal filed by the petitioner on 27.09.2006 against the orders of the RDO, Chevella, in case No.G/L/1375/2001, dated 18.02.2006.

The case of the petitioner in W.P.No.25018 of 2006 is almost similar. He allegedly purchased land admeasuring Ac.0.08 guntas in Survey No.182 A & B(AA) situated at Mirzaguda, Hamlet of Janwada Village under registered sale deed, dated 24.06.2006, vide Document No.8980 of 2005. The fourth respondent (also fourth respondent in the other Writ Petition) obtained ownership certificate under Section 38-E of the Tenancy Act from the RDO, Chevella, on 18.02.2006, aggrieved by which the petitioner preferred an appeal under Section 90 of the Tenancy Act. In this Writ Petition the petitioner seeks a writ of mandamus directing the Joint Collector to dispose of the said appeal.

Sri E.Manohar, the learned Senior Counsel appeared for the petitioners in both the matters and pleaded their case. He submits that when the matter is pending before the Joint Collector, there is a threat of dispossession by rival claimants, and therefore, the Joint Collector ought to have passed orders expeditiously. He fairly submits that the consideration of the main appeal under Section 90 of the Tenancy Act by the Joint Collector can only be after issuing notice to the respondents in appeal and after calling for records which would take certain time, and the Joint Collector ought to have passed orders suspending the proceedings of the RDO, who issued ownership certificate in favour of the fourth respondent.

Of late, persons aggrieved by the order of the revenue officials like Mandal Revenue Officers (MROs) and RDOs file statutory appeals before the Joint Collectors/District Collectors, and even before the expiry of a month or two after filing the appeals, file Writ Petitions before this Court under Article 226 of the Constitution of India seeking a writ of mandamus to appellate authority to dispose of the appeals immediately. The same is the case even when persons file applications before MROs or RDOs seeking pattadar pass books and title deeds, certified copies of the revenue records, orders under

various other revenue laws, and approach this Court seeking direction to the authorities to dispose of the matters expeditiously. Persons approach this court as indicated hereinabove, presumably, for the reason that they apprehend that revenue authorities exercising quasi judicial powers, sit over the matters for reasons more than one, and such delay might defeat the claim/interest of the persons aggrieved. More often than not, recourse to Article 226 of the Constitution of India is taken in relation to revenue matters pending before original authorities/appellate authorities/revisional authorities, either to compel such public authorities to decide the matter in accordance with the observations made by this Court or ignoring the ground position and original record. The saga does not stop there. Immediately after waiting for the period during which a particular public authority is directed to dispose of the matter, a Contempt Case is again filed and this goes on and on. In most of such cases this Court in its wisdom feels that no harm would be caused to the parties by passing an innocuous order, directing concerned public authority to adhere a time schedule for disposal of the matter. Can the jurisdiction of this Court under Article 226 of the Constitution of India conferring the power of judicial review be exercised in such situations?

It is fundamental that the power of judicial review vested in this Court enables to scrutinize a decision when a person aggrieved by such decision complains that his rights have been affected by such decision. The power is judicial review of a decision and certainly it is not judicial review of administration. Judiciary is a coequal, but independent branch of the State and it cannot supervise the day to day administration of public authorities nor can always prescribe time bound job works for such authorities. Further, unless and until a decision made by public authority exists and such decision results in altering the rights or obligations of a person, the grievance if any cannot be redressed in a petition for a judicial review. Of course, the exercise of judicial review is subject to number of limitations and these limitations cannot be ignored while scrutinizing – if it is permissible; the method and manner adopted by the quasi judicial authorities in the case management.

Executive authorities in Revenue Department – for that matter in many Departments; are entrusted with enforcement of large number of Central and State enactments. Some of these confer quasi judicial powers either at the original stage or appellate stage or revisional

stage of public authorities. The Joint Collector of a District for instance, as per the Andhra Pradesh District Collector's Powers (Delegation) Act, 1961, read with the notification issued by the Government vide G.O.Ms.No.77, dated 22.01.1968, is conferred with powers to administer and enforce as many as 170 statutes, statutory rules, besides dealing with matters pertaining to public servants. It is for the Joint Collector to manage his working hours devoting required time for disposing statutory appeals. If the Joint Collector is asked to sit over in appeals all the time every day, other administration would certainly suffer. If in all cases a direction is issued by this Court to the Joint Collector to dispose of the appeals under various enactments within a stipulated time, the effect of such order or such orders on the administration entrusted to Joint Collector can as well be imagined.

What will be the effect of failure on the part of the public authority to dispose of a matter – be it appeal or revision – within statute prescribed time? To elaborate further, in case a statute prescribes time limit for exercise of quasi-judicial/administrative power or jurisdiction and such authority fails to do so, does it prejudice the rights of the parties including representationist/appealee? All the textbook writers on interpretation of statute opine that the time limit prescribed by the statute is ordinarily directory and no prejudice would be caused by non-adherence to time limit by public authority.

In **Shiveswhar v. Dist. Magistrate**[1], a Full Bench of Patna High Court held as under.

> This proviso does not say that where fifteen days' notice is not given as required by the main clause and where the District Magistrate passed an order of allotment after the expiry of a week, the landlord shall be deemed to have been put in possession of the building. This express mention in the proviso of the consequence that would arise in respect of contravention of a portion only of clause (a) and the significant omission to make any reference to the consequence which would arise if the other provisions of clause (a), such as time limit etc., are not obeyed, must lead to the reasonable inference that the provision about time limit is intended to be directory and not mandatory.

In **Bhavnagar University v. Palitana Sugar Mill (P) Ltd.,**[2] a Division Bench of the Supreme Court laid down that unless the consequences for an inaction are expressly provided by the statute,

"the time limit prescribed by the statute is ordinarily directory". It is apt to extract the following from the judgment.

> We are not oblivious of the law that when a public functionary is required to do a certain thing within a specified time, the same is ordinarily directory but it is equally well settled that when consequence for inaction on the part of the statutory authorities within such specified time is expressly provided, it must be held to be imperative.
>
> In *Sutherland's Statutory Construction*, 3rd Edn., Vol. 3, at p.102 the law is stated as follows:
>
> "… unless the nature of the act to be performed, or the phraseology of the statute is such that the designation of time must be considered a limitation of the power of the officer".
>
> At p.107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p.109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision. At p.111 it is stated as follows:
>
> "As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive."
>
> (See also *Crawford on Statutory Construction*, Article 269 at p.535.)
>
> In *Dattatraya Moreshwar v. State of Bombay* it was held as under: (AIR p.185, para 7)
>
> "[Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done."
>
> In *Craies on Statute Law*, 8th Edn., at p.262, it is

stated thus:

> " '... It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed.' ... that in each case you must look to the subject-matter, consider the importance of the provision and the relation of that provision to the general object intended to be secured by the Act, and upon a review of the case in that aspect decide whether the enactment is what is called imperative or only directory."

That being the legal position, the time limit within which a statutory authority should act or due to act not being mandatory, it would be impermissible for this Court in every case to issue a direction as a matter of course to public authorities to dispose of application/appeal/revision, within a specified time. It can always be argued that, such a direction would amount to introducing a requirement in the statute, which the legislature itself did not provide for. Therefore, this Court is of considered opinion that as and when such a writ petition is filed seeking a direction – seemingly innocuous – to dispose of the matter expeditiously, such a direction cannot ordinarily be given unless, of course, there is inordinate delay in discharging public duties which itself amount to arbitrariness.

As observed at the outset, in many cases persons approach this Court apprehending that orders – at least interlocutory orders – would not be passed expeditiously. The Government, therefore, should come forward with some guidelines in exercise of their plenary powers as to how and within which time the appellate/revisional authorities should dispose of the appeal/revision/interlocutory application. That would certainly go a long way in setting right the situation to a large extent.

In this case the petitioners submitted appeals on 27.09.2006 and even before expiry of two months time the present Writ Petition is filed. Therefore, it would be not proper for this Court to pass an order directing the Joint Collector to expedite the disposal of the appeal. In exercise of its power of this judicial review, this Court has to see that all the public authorities act well within their powers and within the bounds of law duly adhering to rule of law. The writ of this Court cannot create a situation where public administration and public governance is rendered public mal administration.

Learned Senior Counsel prays that the Joint Collector be

directed to pass interlocutory orders immediately. This Court has perused the appeals filed by the petitioners, which are annexed to the Writ Petitions. No where in the appeals, the petitioners sought for interlocutory relief or interim suspension of the order of the RDO. Therefore, this Court is not inclined to pass any orders. However, this Court makes it clear that all the public authorities exercising quasi judicial powers, would do well to pass interlocutory orders immediately, if possible, on the date of filing the appeal/revision. In this Writ Petitions no relief can be granted to the petitioners.

In the result, for the above reasons, this Court is not inclined to grant any relief. The Writ Petitions are accordingly dismissed subject to above observations. No costs.

_____

(V.V.S.RAO, J)

01.12.2006
Note: L.R copy to be marked.
B/o.
vs

---

[1] AIR 1966 PATNA 144 (FB)

[2] AIR 2003 SC 511 = (2003) 2 SCC 111